IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED ; 15-6-2007

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.R.P.NPD No.1371 of 2006

Balasubramanian .. Petitioner/Land Lord

vs

Shanthi .. Respondent/Tenant

Civil revision petition preferred under Sec.25 of the Pondicherry Buildings (Lease and Rent Control) Act, 1969 against the judgment and decree dated 21.7.2006 passed in RCA No.4/2005 on the file of the Appellate Authority (Principal District Judge), Pondicherry, confirming the fair order dated 31.1.2005 passed in HRCOP No.76/2002 on the file of the Rent Controller, Pondicherry.

For Petitioner : Mr.R.Subramanian
For Respondent : No Appearance

ORDER

Challenge is made to an order of the Principal District Judge, Pondicherry, made in RCA No.4/2005 whereby the order of the learned Rent Controller of that place in RCOP 76/2002 dismissing the application, was affirmed.

2.The Court heard the learned Counsel for the revision petitioner. There is no representation on the side of the respondent despite service of notice by this Court.

3.It was an application for eviction of the respondent-tenant under Sec.10(2)(i) and 10(3(a)(iii) on the grounds of willful default personal occupation. On enquiry, the Rent Controller was not prepared to accept both the grounds and dismissed the petition. Thereafter, the appeal preferred there from by the landlord was also dismissed. Hence, this revision before this Court.

4.At the time of enquiry of the revision, the learned Counsel for the petitioner would submit that in the instant case, he is not pressing the ground of willful default; that both the authorities below have given a concurrent finding; that further, in respect of that part, he could not assail; that so far as the other ground for personal occupation was concerned, the petitioner-landlord was a physically handicapped person; that he was living in the back portion; that the front portion was actually rented out to the respondent-tenant who was carrying on watch repairing shop; that she was making a payment of rental originally; that a

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lease deed was entered into in the year 1996; that the monthly rental was Rs.800/-; that the landlord received an advance of Rs.15,000/-; that subsequently, the rental was raised to Rs.1,290/- from May 2001; that in the back portion, the landlord was living; that he was actually carrying on a business in a shop on rental basis in the name and style of Jayabarathy Stores situated in Solai Thandavankuppam; that sufficient proof was also produced before the lower authority in that regard; that the said shop is situated about 3 kms. away; that the petitioner-landlord was a handicapped; that he actually applied for license to carry on the business; that considering the circumstances, he wanted to carry on the business in his own premises, and hence, it is required for his personal use and occupation; but, both the authorities below have declined to grant the relief stating that the license though received by him, was subsequent in point of time, and it was not mentioned in the lease deed entered into by him with the other owner of the property or in the notice issued by him on 12.6.2002, and in view of the non-mention of the same in those document and the fact that the license has also been subsequently obtained which was one created for the purpose of the case, the relief could not be granted; that it is pertinent to point out that the license was obtained even prior to the filing of the RCOP; that it was actually available for him to show that he was carrying on business on the day of filing of the application; that under the circumstances, both the authorities below should have ordered eviction, but failed to do so both factually and legally, and hence, it has got to be considered by this Court.

5.After careful consideration of the submissions made by the petitioner and also looking into the materials available, this Court is of the considered opinion that an order of eviction has got to be passed. In the instant case, the revision petitioner, admittedly, came forward with the application on two grounds namely willful default and personal use and occupation. So far as the first ground is concerned, the orders by the lower authorities were not challenged before this Court. As far as the other ground of personal use and occupation is concerned, both the authorities below have found that there is lack of bona fide on the part of the petitioner-landlord. It is an admitted fact that the landlord was actually occupying the back portion of the premises, and the front portion was let out to the tenant for carrying on watch repairing shop from the year 1996. It is also an admitted fact that the petitioner was a physically handicapped, and he was carrying on his rice business called Jayabarathy Stores in the place situated about 3 kms. away. Thus, it would be quite clear that he was also carrying on business in the rented premises. Now, an application has also been made by him to the Corporation seeking license for carrying on the business in the premises in question, before the filing of the RCOP. Along with the RCOP, that license has also been filed. It is true that the availability of license issued by the Corporation, was neither mentioned in the lease deed entered into by the landlord with the other owner of the property under whom he is a tenant, nor in the notice issued by the landlord to the present tenant. At the time when the RCOP has been filed, the license issued by the Corporation, Pondicherry, was very well available to carry on the business. Needless to say that carrying on business what is found in Sec.10(3)(c) has already been interpreted by this Court. When a person has obtained a license to commence his business in a particular place, it has got to be construed as carrying on business. In the instant case, he is already carrying on business in a different place in Solai Thandavankuppam, which is situated 3 kms. Away. In the back portion of

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the property in question, he is living, and the front portion was let out. Apart from that, he is a physically handicapped. In such circumstances, once the license has been issued, there cannot be any legal impediment for ordering eviction on the ground of personal use and occupation. Both the authorities below have failed to consider these circumstances, but have negatived the relief, which, in the opinion of this Court, has got to be set aside, since the order is found to be infirm. Accordingly, it is set aside, and now, eviction order is passed. Though the respondent is absent, this Court gives him 6 (six) months' time to vacate and hand over possession to the landlord.

6.In the result, this civil revision petition is allowed. No costs.

nsv/

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1.The Principal District Judge
Rent Control Appellate Authority
Pondicherry

2.The Rent Controller
Pondicherry

NG(CO)
dcp/3.7.07

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